

**BULLETIN  
CHILD NUTRITION PROGRAMS****NSLP 16-10****November 15, 2010****SUBJECT:** Clarification of Competitive Foods and Foods of Minimal Nutritional Value**CONTACT:** Jyl Bosone**PH:** (801) 538-7692

This memo is in response to several questions that the Department of Agriculture (USDA) Food and Nutrition Service (FNS) has received from Regions, States, program operators and industry regarding the definitions of “competitive foods” and “foods of minimal nutritional value.”

This memo makes a clarification in the use of items which are exempted from the list of foods of minimal nutritional value. We have highlighted the new instructions with yellow, below.

A “competitive food” is defined by 7 CFR 210.11 and 220.12 as any food item that is sold in competition to the reimbursable school meal. A “food of minimal nutritional value” is a food that fits into specific categories defined in the Competitive Food Services regulation also known as “foods of minimal nutritional value.” This regulation, 7 CFR Parts 210.11, and 220.12, along with Appendix B to Parts 210 and 220, requires that “State agencies and school food authorities **prohibit** the sale of foods of minimal nutritional value in food service areas during meal periods.” The term “food service areas” is anywhere school meals are being served or consumed, including classrooms and multipurpose rooms that double as cafeterias during meal periods.

The categories of “foods of minimal nutritional value” listed in this regulation include: 1) Soda Water 2) Water Ices 3) Chewing Gum and 4) Certain Candies – (i) Hard Candy, (ii) Jellies and Gums, (iii) Marshmallow Candies, (iv) Fondant, (v) Licorice, (vi) Spun Candy, and (vii) Candy Coated Popcorn. Foods in these categories are foods of minimal nutritional value unless the specific food item has been exempted from the category by the FNS national office.

If a food that is classified into one of these categories receives an FNS exemption, then this food is considered a “competitive food.” This means that the exempted food can then be sold in competition to the school meal as an *a la carte* item. It is important to emphasize that “foods of minimal nutritional value” that have received an exemption can **only** serve the function of an *a la carte* item to be sold in competition to the school meal.

If a food item from any one of the four categories of “foods of minimal nutritional value” does not have an exemption, then the product **cannot** be sold in food service areas during meal periods. For example, **all** carbonated and aerated beverages are categorized as “Soda Water.” Therefore, all beverages that bubble and fizz are foods of minimal nutritional value that **cannot** be sold in food service areas during meal periods. However, if the carbonated or aerated beverage manufacturer has received a letter from FNS exempting the beverage from the “Soda Water” category of “foods of minimal nutritional value,” then the beverage can be sold *a la carte* as a competitive food. Please refer to TA 06-2008, issued on September 15, 2008, for technical assistance regarding carbonated and aerated beverages.

The list of products included in the *Exemptions Under the Competitive Food Services Regulation* **does not constitute an approval or endorsement by USDA**. Exempted products do not fit the typical and customary function of a healthy meal component and **shall not** be served as part of the reimbursable meal. Foods served as part of the reimbursable meal shall be wholesome and easily recognized by children as part of a food group that contributes to a healthy diet.

The current list of exempted products from the Competitive Food Services regulation is listed below. Information is also available in Appendix B to Parts 210 and 220 (foods of minimal nutritional value).

The format of the exemption list has changed. Companies that have an exemption are now listed alphabetically and we have added a column to include the products portion size. It is important to remember that **the exemption of one product does not mean that similar products or a family of products are exempted unless specifically stated in an exemption letter and/or included on the exemption list. Products that have an exemption should match the ingredient statement and portion size that is included on this list.**

Two new companies have been added to the list of exemptions under the Competitive Food Services Regulation, eleven new products have been added, fourteen previously exempted products have been reformulated, two products have updated their allergen statement, two companies have changed their name, twenty products have been removed and two companies have been removed from the exemption list.

### **NEW COMPANIES**

Sconza Candy Company has added Sconza Gummy Bears 1.0 oz to the list of products exempted from the jellies and gums category of “foods of minimal nutritional value” as defined in 7 CFR Part 210.11(a)(2) and Part 220.2 (i-1). Nestle USA has added Juicy Juice Sparkling Berry, Sparkling Apple and Sparkling Orange to the list of products exempted from the “soda water” category of “foods of minimal nutritional value” [7 CFR Part 210 Appendix B (a)(1) and Part 220 Appendix B (1)].

### **NEW PRODUCTS**

The Switch Beverage Company has added Sparkling 100% Juice Lemon Lime, Red Toe Soda

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LLC has added Orange Wave, Citrus Rush and Wild Berry carbonated beverages, and Skylar Haley has added Essn Sparkling Juice Blood Orange and Cranberry and Essn Sparkling Juice Minneola Tangerine carbonated beverages to the list of products exempted from the “soda water” category of “foods of minimal nutritional value” [7 CFR Part 210 Appendix B (a)(1) and Part 220 Appendix B (1)]. Albanese Confectionary Group, Inc., has added A+ Gummi Bears to the list of products exempted from the "jellies and gums" section of the Certain Candies category of "foods of minimal nutritional value" [7 CFR Part 210 Appendix B (a)(4)(ii) and Part 220 Appendix B (4)(b)].

### **REFORMULATIONS**

General Mills has reformulated Special Edition Scooby Doo™ and Sunkist™ Fruit Flavored Snacks and Special Edition Crazy Colors® Fruit Roll-Ups® from their currently exempted products and has replaced Special Edition Screamin' Green Hot Color Fruit Roll-Up®, Electric Yellow Hot Color Fruit Roll-Up®, Sizzling Red Hot Color Fruit Roll-Up®, and Blazin' Blue Hot Color Fruit Roll-Up® with Special Edition Blastin' Berry Hot Colors® Fruit Roll-Ups®. 4u2u Brands has reformulated Fruit 66 Fruit Punch, Kiwi Strawberry, Orange Tangerine and Apple Berry carbonated juice beverages from their list of currently exempted products and The Switch Beverage Company has also reformulated The Switch Black Cherry, Orange Tangerine, Watermelon Strawberry, Kiwi Berry, Fruit Punch and Grape carbonated juice beverages from their list of currently exempted products.

### **ALLERGEN STATEMENT UPDATES**

The Switch Beverage Company has updated their allergen statement for their previously exempted Orange Tangerine beverage. They have omitted the statement “contains soy” at the end of their ingredient list because that allergen was never present in the product formulation.

### **COMPANY NAME CHANGES AND ALLERGEN STATEMENT UPDATES**

BIOFREE-USA has changed its company name to FIZZA, LLC. Their list of currently exempted products remains the same, FIZZA® Orange Crème, FIZZA® Blue Ridge Cola and Apple FIZZA®. Brach's Confections, Inc. has been sold and is now being produced by Farley's & Sathers Candy Company, Inc. They have removed Hi-C® Fruit snacks, Froot Loops Fruit Snacks, Clifford, the Big Red Dog™ Fruit Snacks from the exemption list. They are continuing to produce ORCHARD FRUIT® Fruit Snacks, which currently have an exemption. They have replaced the “™” symbol in the name of this product with the “®” symbol and have updated the ingredient statement to remove the allergen statement because it was no longer accurate.

### **PRODUCTS REMOVED**

Albanese Confectionary Group, Inc. has removed A+ Gummies and General Mills has removed Fruit Gushers Strawberry Punch, Fruit Roll-ups Tropical Cherry, Fruit Roll-ups Strawberry Punch and Pokemon Rolls Punch Red from the list of products exempted from the "jellies and gums" section of the Certain Candies category of "foods of minimal nutritional value" [7 CFR Part 210 Appendix B (a)(4)(ii) and Part 220 Appendix B (4)(b)]. Switch Beverage Company has removed Apricot Peach, Peach Apricot and Orange Mango 100% Juice Carbonated from the list of products exempted from the “soda water” category of “foods of minimal nutritional

value” [7 CFR Part 210 Appendix B (a)(1) and Part 220 Appendix B (1)].

### **COMPANIES REMOVED AND PRODUCTS REMOVED**

Eastside Beverage Company and its line of Sparkling Spring Water Fruit Beverages including Orange Passion Fruit Refresher, Red Raspberry Refresher, Strawberry Kiwi Refresher, Wild Blackberry Refresher, and Pink Grapefruit Refresher have been removed. Volunteer Marketing Inc. and its line of FIZZ Sparkling Fruit Juice Beverages including FIZZ Island Blast, FIZZ Black Cherry, FIZZ Concord Grape, and FIZZ Tangerine Dream have also been removed from the list of products exempted from the “soda water” category of “foods of minimal nutritional value” [7 CFR Part 210 Appendix B (a)(1) and Part 220 Appendix B (1)].

The exemption of the products listed above means that they are no longer considered foods of minimal nutritional value and can therefore be sold in competition to the reimbursable meal during the meal period in a school food service area. **The exemption of these products does not mean that these products are approved or endorsed by the Food and Nutrition Service. Nor does an exemption indicate that these products have significant nutritional value.** An exemption from this list is **not an approval** for these exempted products to be used in the National School Lunch Program (NSLP). In addition, the exemptions should not be perceived as guidance or encouragement to State agencies and school food authorities concerning their possible purchase.

**Exempted products do not fit the typical and customary function of meal components and should not be served as part of the reimbursable meal.** Please be aware that marketing materials for products included on this list may provide information regarding fruit servings or serving sizes. This information is not applicable to the reimbursable meal. Products on this attached list cannot be used to satisfy any component of the reimbursable meal. Should you receive information regarding fruit servings or serving sizes, please disregard this information. Products on the attached list are to be sold in the a la carte section of the cafeteria and not the reimbursable meal line.

Please be aware that we continually remind companies that have products on this exemption list that the only marketing language permitted for these products for both print and electronic product literature is as follows: “Exempt from the “jellies and gums” section of the Certain Candies category of “Foods of Minimal Nutritional Value” or “Exempt from the “soda water” category of “Foods of Minimal Nutritional Value”. USDA symbols or logos are intended for the official use of the USDA only and must not be used for product marketing materials or websites. The USDA symbol or logo may not be used by anyone outside of USDA without permission. Modified logos that have the appearance of an endorsement made by USDA are also not permitted. Logos are expressly excluded from use to imply endorsement of a commercial product or service.

It is important to note that some of these products are manufactured outside of the United States. The exemption of these products does not exclude them from the Buy American Provision. When school foodservice funds are used to acquire foods, schools and institutions must ensure that the items procured are in compliance with the Buy American regulatory provision. Procurement

requirements defined by 7 CFR Part 210.21 (d) indicate that schools and institutions participating in the National School Lunch Program located in the contiguous United States are required by law to use school food service funds, to the maximum extent practicable, to buy domestic commodities or products for meals served under this program. A domestic commodity or product is defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

As always, please be aware that several companies with exempted foods produce similar products that are not exempted and are therefore still considered foods of minimal nutritional value. **The exemption of one product does not mean that similar products or a family of products are exempted unless specifically stated in an exemption letter and/or included on the exemption list.**

The ingredient statement of each exempted food is included in the attached exemption list. This should allow schools to differentiate between exempted products and similar non-exempted products.